

California Plant Protection, Incorporated, d/b/a C.P.P. Security Services¹ and Brotherhood of Police and Security Officers, Local #3, Petitioner. Case 39-RC-141

November 18, 1981

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a petition for representation filed on November 14, 1980, under Section 9(a) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Thomas M. Good on December 11, 1980. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 1, this proceeding was transferred to the Board for decision. Thereafter, the Employer filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.²

Upon the entire record in this proceeding, the Board finds:

1. The Employer, a California corporation with corporate headquarters in Van Nuys, California, maintains a branch facility in Rocky Hill, Connecticut, also known as the Hartford office, where it is engaged in staffing and supplying security officers to employers within the State of Connecticut. Between January 1, 1980, and December 11, 1980, the Hartford office obtained gross revenues amounting to approximately \$225,000 from services furnished to Travelers Insurance Company; gross revenues amounting to approximately \$136,000 from services to The New Haven Register; and gross revenues amounting to approximately \$90,000 from services to The Farley Company. The parties stipulated that these companies are employers within the jurisdiction of the Board.

We find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² The Hearing Officer took administrative notice of the records in *Bally's Park Place, Inc.*, 257 NLRB No. 132 (1981); *Burns International Security Services, Inc.*, 256 NLRB 959 (1981); *Wells Fargo Guard Services Division of Baker Protective Services, Inc.*, 236 NLRB 1196 (1978).

2. The Employer contests Petitioner's status as a labor organization. It questions the stability of Petitioner's structure and the participation of members in the organization.

Also, the Employer disputes whether Petitioner acts with the purpose of advancing employee interests instead of the interests of particular individuals.

Testimony at the hearing shows that Petitioner was formed in August 1980, that employees participate in the organization, that its purpose is to represent employees on wages, hours, and other working conditions, and its function is to negotiate bargaining agreements with management. Petitioner is affiliated with the Federation of Special Police and Law Enforcement Officers (herein Federation), and has a constitution and bylaws, officers, and an executive board. From the date of its formation to the date of the hearing, a period of about 4 months, Petitioner had sought to organize employees, had discussed with employees complaints they had against their employer, had met with employees who had signed union authorization cards and reported to them about organizational progress, and had filed several representation petitions and an unfair labor practice charge.

We find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The Employer's contentions, based in part on the record in *Burns International Security Services, Inc.*, *supra*, that allegations of misconduct have been made against Federation, with which Petitioner is affiliated, and certain Federation officials, do not establish that Petitioner is unable to represent the interests of employees or is disqualified from representing employees. See the discussion of these contentions in the *Burns* Decision at Appendix, Supplementary Objection No. 5.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated and we find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers employed from the Employer's Rocky Hill, Connecticut, location, but excluding all supervisors,³ and professional employees as defined in the Act.

Some of the security officers are designated "sergeants" and "lieutenants." These designations are based on a promotional system which confers in-

³ The parties stipulated that field supervisors are supervisors within the meaning of the Act and should be excluded from the unit.

creases in rank along with merit wage increases. Despite the designations, the sergeants and lieutenants perform essentially the same duties as other security officers. They do not schedule or assign work; they do not hire or fire or effectively recommend such action. We find that the sergeants and lieutenants are not supervisors as defined in the Act, and we include them in the unit.

5. Petitioner's president testified that Petitioner does not admit to membership employees other than guards and has not attempted to organize non-guards. He also testified that Federation does not admit to membership employees other than guards. The Employer contends, however, that under Section 9(b)(3) of the Act⁴ Petitioner may not be certified to represent a unit of guards because of its affiliation with Federation, which the Employer asserts is affiliated with organizations which admit non-guards to membership—the Association of Public and Private Labor Employees (herein APPLE) and Allied International Union of Secu-

⁴ Sec. 9(b)(3) provides in pertinent part that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

rity Guards and Special Police (herein Allied). In support of its assertion that Federation is affiliated with APPLE and Allied, the Employer relies upon evidence in *Bally's Park Place, Inc., supra*. In the Decision in that case the Board found only a limited relationship between Federation and APPLE and no present or past affiliation between them that would disqualify the petitioning organization in *Bally's Park* from certification to represent a guards' unit by virtue of its affiliation with Federation. The Board also found that the record in *Bally's Park* failed to establish that Allied represented employees other than guards, and, consequently, any affiliation between Federation and Allied would not subject a labor organization affiliated with Federation to disqualification from certification under Section 9(b)(3).

Based upon these findings in the *Bally's Park* Decision concerning Federation's relations to APPLE and Allied we find that Petitioner here is not disqualified under Section 9(b)(3) from certification to represent a guards' unit because of its affiliation with Federation.

[Direction of Election and *Excelsior* footnote omitted from publication.]